No. 17-9560

IN THE

Supreme Court of the United States

HAMID MOHAMED AHMED ALI REHAIF,
Petitioner,

v.

UNITED STATES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF PETITIONER

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QUESTION PRESENTED

Whether the "knowingly violates" provision of 18 U.S.C. § 924(a)(2) applies to the first listed element of an 18 U.S.C. § 922(g) crime – a person's prohibited status.

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BRIEF OF PETITIONER

The Petitioner, Hamid Mohamed Ahmed Ali Rehaif, respectfully requests that this Court reverse the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The initial opinion of the United States Court of Appeals for the Eleventh Circuit was published at *United States v. Rehaif*, 868 F.3d 907 (11th Cir. 2017). Pet. App. 21a-37a. After a petition for rehearing *en banc* was filed, the Eleventh Circuit *sua sponte* vacated its initial published opinion and substituted a revised opinion, which is published at *United States v. Rehaif*, 888 F.3d 1138 (11th Cir. 2018). Pet. App. 1a-20a.

JURISDICTION

The Eleventh Circuit issued its revised opinion on March 26, 2018. Petitioner filed a timely petition for a writ of certiorari on June 21, 2018, which this Court granted on January 11, 2019. __ S. Ct. __, 2019 WL 166874 (Jan. 11, 2019). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the Constitution of the United States provides in relevant part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law.

Section 922(g) of Title 18, U.S. Code, provides:

> It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

> (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
>
> (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
>
> (9) who has been convicted in any court of a misdemeanor crime of domestic violence,
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Section 924(a)(2) of Title 18, U.S. Code, provides:

> Whoever knowingly violates subsection . . . (g) . . . of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

STATEMENT OF THE CASE

Section 922(g) prohibits persons of various statuses from possessing a firearm or ammunition. 18 U.S.C. § 922(g). A person who "knowingly violates" § 922(g) is subject to up to 10 years in prison. 18 U.S.C. § 924(a)(2). The issue presented is whether the "knowingly violates" requirement applies to both substantive elements, status and possession, or whether it applies to only the second substantive element, possession. The plain language of the statutes establishes that the government must prove an individual has knowledge of both his status and his possession of a firearm.

1. Mr. Rehaif is a citizen of the United Arab Emirates (UAE). Doc. 108 at 175; Doc. 73-5 (Exhibit 3A). In July 2013, Mr. Rehaif applied for and was granted admission to Florida Institute of Technology (FIT) as a student. Doc. 108 at 186-89. The admissions office at FIT generated an I-20 Form, which is a "Certificate of Eligibility for Nonimmigrant (F-1) Student Status – For Academic and Language Students." Doc. 108 at 187, 207-08; Doc. 73-3 (Exhibit 2A). FIT sent the I-20 Form to Mr. Rehaif, who then obtained an F-1 student visa. Doc. 108 at 188, 210-11; Doc. 73-4 (Exhibit 2B); Doc. 73-6 (Exhibit 3B).

The student visa was issued on July 25, 2013, and provided an expiration date of July 22, 2017. Doc. 73-6. The stamps on the visa show the two times Mr. Rehaif entered the United States. Each have "F1" and "D/S" scrawled on them. *Id.* There was no evidence that Mr. Rehaif was informed of or understood what these scribbled marks meant. The trial testimony revealed that "F1" means that Mr. Rehaif was admitted into the United States as an F-1 student. Doc. 108 at 215. The "D/S" means "duration of status," which is the length of time that individuals in F-1 status are admitted into the United States. *Id.* at 215, 228.

Mr. Rehaif attended school at FIT during the Fall 2013, Spring 2014, and Fall 2014 semesters. Doc. 73-9 (Exhibit 5); Doc. 108 at 219-21. On January 21, 2015, FIT sent emails to Mr. Rehaif at the two email addresses it had on file for him. Docs. 73-7, 73-8 (Exhibits 4A and 4B); Doc. 108 at 194. Other than the addresses, the emails were identical, each stating Mr. Rehaif had been "academically dismissed" and his "immigration status will be terminated on February 5, 2015 unless you transfer out before that date, or you notify our office that you have already left the United

States." Docs. 73-7, 73-8; Doc. 108 at 218-19. FIT did not confirm that Mr. Rehaif had received the emails. Doc. 108 at 233. Nor did FIT attempt to speak with Mr. Rehaif on the telephone or otherwise to discuss the implications of his school termination. *Id.* at 233-34. Mr. Rehaif did not respond to either email. *Id.* at 218-19.

After receiving FIT's notification that Mr. Rehaif was no longer enrolled there, the Student & Exchange Visitor Immigration System (SEVIS) terminated Mr. Rehaif's visa status on February 23, 2015. Doc. 73-10 (Exhibit 6); Doc. 108 at 222-24. The SEVIS information was then reported to the Student & Exchange Visitor Program (SEVP). Doc. 108 at 237, 241.[1] There was no evidence introduced at trial that anyone from the SEVP, or any other governmental agency, contacted Mr. Rehaif about the status change that was made in the SEVIS data bank. Doc. 108 at 243-44.

2. On December 2, 2015, Mr. Rehaif went to a shooting range in Melbourne, Florida. Pet. App. 3a; *see* Doc. 109 at 38-43, 45; Doc. 73-14 (Exhibit 10A). He purchased a box of ammunition and rented a firearm for one hour of shooting. Doc. 109 at 50-52; Doc. 73-17 (Exhibit 11). Part way through the hour, he exchanged one firearm for another. Doc. 109 at 63-64.

On December 8, 2015, law enforcement went to the hotel where Mr. Rehaif was staying after receiving a call saying Mr. Rehaif had been staying there for almost two months, paying for the room anew each day, and he had given ammunition to two hotel employees. Doc. 109 at 97. FBI Agent Thomas Slone

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[1] SEVIS and SEVP are both part of the U.S. Department of Homeland Security (DHS). Doc. 100 at 15-16; Doc. 108 at 223-24, 236-37.

questioned Mr. Rehaif. According to Agent Slone, Mr. Rehaif acknowledged that, at the shooting range, he shot two firearms and purchased the box of ammunition found in his hotel room. *Id.* at 100. Agent Slone also testified that, during his interview, Mr. Rehaif said he had been academically dismissed from FIT after the Fall 2014 semester and that he knew he was out of status for his immigration because he was not in school. *Id.* at 99, 101. The interview was not recorded. *Id.* at 101. According to Agent Slone, it was "standard procedure for us not to record the interview unless somebody was in custody." *Id.* Also present at the interview were "one other special agent and one Melbourne police officer." *Id.* at 104; *see* Doc. 44 at 3-4. Agent Slone, though, was the only person who testified about what Mr. Rehaif allegedly said in the interview.

3. The grand jury subsequently charged that Mr. Rehaif, an alien illegally and unlawfully in the United States, knowingly possessed, in and affecting interstate and foreign commerce, a firearm on December 2, 2015 (Count One), and ammunition on December 8, 2015 (Count Two), both in violation of 18 U.S.C. §§ 922(g)(5)(A) and 924(a)(2). Doc. 13.

At trial, the government requested that the district court instruct the jury: "The United States is not required to prove that the defendant knew that he was illegally or unlawfully in the United States." Doc. 53 at 33. Mr. Rehaif opposed the request, arguing that the United States had to prove both that he had knowingly possessed a firearm and that he knew of his prohibited status – that he was illegally or unlawfully in the United States when he had possessed the firearm. *Id.* at 33-34. Mr. Rehaif asserted that "knowledge is a defense in the case." Doc. 100 at 19. The government responded: "[W]e don't think we have to show that he

knew he was out of status," and "[H]e doesn't have to know that he's an illegal alien." *Id.* at 28, 46.

The district court resolved the dispute in favor of the government, instructing the jury on the elements of the offense as follows:

> For you to find the Defendant guilty, the government must prove each of the following beyond a reasonable doubt:
>
> • the Defendant knowingly possessed a firearm (Count One) and/or ammunition (Count Two) in or affecting interstate or foreign commerce; and
>
> • before possessing the firearm and/or ammunition, the Defendant was an alien illegally or unlawfully in the United States.

Doc. 69 at 11; Doc. 109 at 168. The court further instructed:

> The United States is not required to prove that the Defendant knew that he was illegally or unlawfully in the United States.

Doc. 69 at 16; Doc. 109 at 170.

Also during trial, the defense sought to admit a copy of Mr. Rehaif's Florida driver license record. Doc. 109 at 119-29; *see* Doc. 74-1. The defense theory was that Mr. Rehaif's record showed his license was suspended in August 2015, but "no warrant [was] issued for his arrest for immigration purposes or otherwise." Doc. 109 at 128. This, defense counsel argued, would rebut Agent Slone's testimony that Mr. Rehaif admitted to being out of status. *Id.* The district court sustained the government's objection to the admission of the driver's license record, finding it would be too confusing and that it did not rebut any testimony. *Id.* at 129. But the court then added: "If it were a specific intent crime

requiring him to know that he is, his immigration status, then the ruling would be otherwise." *Id.* at 130.

The jury found Mr. Rehaif guilty on both charges. Doc. 71. He was sentenced to 18 months in prison on each count, to be served concurrently. Doc. 85. Upon his release from prison, Mr. Rehaif was deported to the UAE.

4. On appeal, Mr. Rehaif renewed his argument that the phrase "knowingly violates" in § 924(a)(2) applies to § 922(g) and thus requires the government to prove that he knew he was in the United States illegally or unlawfully when he possessed the firearm. Pet. App. 6a. The district court's contrary jury instruction thus misstated the law and eviscerated Mr. Rehaif's planned defense (that the government could not prove he knew he was in the United States illegally or unlawfully). *Id.*

5. In its revised opinion, the Eleventh Circuit rejected Mr. Rehaif's argument that the text of § 922(g) and § 924(a)(2) constituted "a perfectly clear law as it is written, plain in its terms, straightforward in its application." Pet. App. 10a (quoting *United States v. Games-Perez*, 667 F.3d 1136, 1145 (10th Cir. 2012) (Gorsuch, J., concurring in judgment)). The court also found that it was bound by precedent to conclude that "the government need not prove that the defendant knew of his prohibited status." Pet. App. 11a-12a (citing *United States v. Jackson*, 120 F.3d 1226 (11th Cir. 1997)). The court asserted legislative history buttressed its conclusions. Pet. App. 12a-14a. The court also explained why it thought this case constituted an exception to the general rule that the government must prove *mens rea* for each substantive element of the crime: "the government did not have the burden of proving that the defendant knew a specific fact or detail about himself." Pet. App. 14a-17a.

SUMMARY OF ARGUMENT

The starting point when construing a statute is its language. When, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms. Section 924(a)(2)'s "knowingly violates" requirement unambiguously applies to both the status and possession elements. The structure of the provisions also dictates as much: Section 922(g) first sets out the status element and *then* the possession element of the crime. The "knowingly violates" requirement for a § 922(g) violation does not somehow skip over the status element and apply only to the possession element.

This Court's precedent applying a *mens rea* requirement in criminal statutes confirms Mr. Rehaif's position. This Court presumes that a *mens rea* requirement attaches to each of the statutory elements that criminalize otherwise innocent conduct. And ordinarily, as is the case here, introducing the elements of a crime with the word "knowingly" means that *mens rea* requirement applies to all the ensuing substantive elements of the crime. *Flores-Figueroa v. United States*, 556 U.S. 646, 652 (2009). Indeed, the Court has presumed that scienter requirements attach to each element of a crime even when the statute contains no *mens rea*. This presumption is deeply rooted in the established principle that severe criminal penalties are warranted only when a defendant commits an evil act with an "evil–meaning mind." *Morissette v. United States*, 342 U.S. 246, 251 (1952). This principle fully applies here.

Mr. Rehaif's reading of the statutes also accords with their legislative history and Congress's purpose. Congress's addition of the word "knowingly" in § 924(a)(2) reflects its intention to impose a *mens rea* requirement on all substantive elements of a § 922(g)

offense. Indeed, Congress added the "knowingly violates" requirement to address a concern that individuals were suffering "severe penalties for unintentional missteps." *See, e.g.*, 132 Cong. Rec. 9590 (1986) (statement of Sen. Hatch). This concern supports Mr. Rehaif's view that the requirement that a defendant act "knowingly" must apply to the sole element of the crime that makes the defendant's conduct criminal – his status.

Additionally, the canon of constitutional avoidance counsels in favor of Mr. Rehaif's interpretation. If the government did not have to prove a defendant had knowledge of the only element of the crime that makes firearm possession illegal, that omission would raise serious Due Process concerns. Indeed, this Court's precedent stretching back to *Morissette* strongly suggests that in such circumstances, the Due Process Clause requires a finding of an "evil mind" before severe criminal penalties are imposed.

The rule of lenity also favors Mr. Rehaif's position. To the extent that criminal statutes are ambiguous after the application of all tools of statutory interpretation, the ambit of the statutes should be resolved in favor of lenity. Critically, where, as here, dispensing with a *mens rea* requirement would subject a broad range of constitutionally protected conduct to criminal penalties, it is particularly appropriate to apply the rule of lenity to require that a defendant act knowingly. Doing so serves one of the primary purposes of the rule of lenity – ensuring that defendants have notice that their putative conduct is unlawful. *Liparota v. United States*, 471 U.S. 419, 427 (1985).

The lower court's reasoning is not persuasive. That this Court has not applied a *mens rea* requirement to jurisdictional elements does nothing to undermine

that the *mens rea* requirement applies to both substantive elements of the offense – status and possession. Further, the court of appeals' assertion that this Court's cases do not apply where one element of a crime is a defendant's own status is both unsupported by the cases and untethered to the statutes. When the question of whether a defendant has a particular status is complex – as here, with the question of immigration status, or whether a certain crime is a felony – there is no basis for distinguishing that status from any other element of a crime. Finally, the lower court's speculation that applying the "knowingly violates" requirement to the status element is inconsistent with Congress's purpose does not overcome the clear text and is incorrect.

ARGUMENT

I. THE PLAIN LANGUAGE OF THE STATUTES AND THIS COURT'S PRESUMPTIONS REGARDING CRIMINAL *MENS REA* CONCLUSIVELY DEMONSTRATE THAT § 924(a)(2)'s "KNOWINGLY VIOLATES" PROVISION APPLIES TO BOTH THE STATUS AND POSSESSION ELEMENTS OF A § 922(g) VIOLATION.

Section 924(a)(2) of Title 18, U.S. Code, provides that "[w]hoever knowingly violates subsection . . . (g) . . . of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both." Section 922(g), in turn, prohibits persons of certain statuses from possessing a firearm or ammunition.

The plain text of the statutes demonstrates that a person "knowingly violates" § 922(g) when he knows (1) his status and (2) he possesses a firearm. Indeed, a person does not "knowingly violate[]" § 922(g) when he does not know the one fact that makes his

possession of a firearm unlawful – i.e., his status. The structure of § 922(g), which lists the status element first and then the possession element, reinforces that § 924(a)(2)'s "knowingly violates" provision applies to both substantive elements of § 922(g). Moreover, Mr. Rehaif's reading is consistent with this Court's longstanding tradition of applying *mens rea* to each substantive element of an offense.

A. The Plain Text and Structure of the Provisions Make Clear That "Knowingly Violates" Applies to Both the Status and Possession Elements of § 922(g).

By its terms, the "knowingly violates" provision in § 924(a)(2) is not limited to the knowing possession of a firearm. A plain reading of the statutes shows that the "knowingly violates" provision applies equally to the status and possession elements of a § 922(g) crime.

The starting point when construing a statute is the language of the statute. *Staples v. United States*, 511 U.S. 600, 605 (1994). "As in all cases involving statutory construction, our starting point must be the language employed by Congress, and we assume that the legislative purpose is expressed by the ordinary meaning of the words used." *Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982) (citations and internal quotation marks omitted). The Court has instructed "time and again" that courts presume Congress "says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (citing cases). Courts must "give effect to the text Congress enacted." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 228 (2008); *see Culbertson v. Berryhill*, 139 S. Ct. 517, 521 (2019) ("We begin with the language of the statute itself, and that is also where the inquiry should end, for the

statute's language is plain.") (internal quotation marks, brackets, and citation omitted).

The statutory text here is unambiguous. Thus, the "knowingly violates" language of § 924(a)(2) applies to both substantive elements of a § 922(g) violation: (1) the status that makes a person's possession illegal (here, that Mr. Rehaif was "illegally or unlawfully in the United States") and (2) the possession of a firearm. A person does not *knowingly violate* § 922(g) without knowing the one fact that makes his possession of the firearm illegal – i.e., his status. Congress could have, of course, demonstrated a different intent through other structural cues,[2] but nothing in the language of §§ 922(g) and 924(a)(2) signals to the reader that the "knowingly violates" requirement bypasses the status element only to apply to the possession element.

This plain grammatical reading is reinforced by the structure of the statutes. Section 922(g) *first* lists the statuses of persons covered, and only *then* provides that persons in those statuses may not possess firearms and ammunition. With this sequencing, the most natural reading of the statutes is that the "knowingly violates" requirement applies to both status and possession elements. To construe the provisions otherwise, one must "read[] the word 'knowingly' as leapfrogging over the very first § 922(g) element and touching down only at the second" – an interpretation that "defies linguistic sense – and not a little grammatical gravity." *United States v. Games-Perez*, 667 F.3d 1136, 1143 (10th Cir. 2012) (Gorsuch,

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[2] *See, e.g.*, 18 U.S.C. § 2241(c)-(d) (proscribing engaging in a sexual act with a person under the age of 12, and providing: "In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years").

J., concurring in judgment). "[T]he *law* before us that survived the gauntlet of bicameralism and presentment couldn't be plainer. By their express terms, §§ 922(g) and 924(a)(2) do not authorize the government to imprison [persons] unless and until the government can show they *knew* of their felon status at the time of the alleged offense." *United States v. Games-Perez*, 695 F.3d 1104, 1118 (10th Cir. 2012) (Gorsuch, J., dissenting from denial of rehearing en banc).[3]

B. This Reading of the Plain Text is Consistent with this Court's Treatment of *Mens Rea* Requirements in Criminal Statutes.

The most natural reading of the provisions accords with this Court's precedent applying the statutory *mens rea* requirement to all substantive elements of a criminal violation. In *Flores-Figueroa*, the Court interpreted a statute that imposed criminal penalties on certain offenders who "knowingly transfer[], possess[], or use[], without lawful authority, a means of identification of another person." 556 U.S. at 648. The question was whether that statute required the government to prove "that the defendant *knew* that the 'means of identification' he or she unlawfully transferred, possessed, or used, in fact, belonged to 'another person.'" *Id.* at 647. There, as here, all parties agreed that that the defendant had to know that he or she was engaged in the activity in question. But the government argued that the word "knowingly" "does not modify the statute's last phrase ('a means of

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[3] The third element of a § 922(g) violation is the interstate or foreign commerce nexus. That element is jurisdictional in nature, not substantive, and intent is not generally required for such an element. *See* Part III.A, *infra*.

identification of another person') or, at the least, it does not modify the last three words of that phrase ('of another person')." *Id.* at 648.

This Court rejected the government's argument, using reasoning applicable here. The Court found "strong textual reasons for rejecting the Government's position" because, "[a]s a matter of ordinary English grammar, it seems natural to read the statute's word 'knowingly' as applying to all the subsequently listed elements of the crime." *Id.* at 650. The Court further explained that, in interpreting federal criminal law, "courts ordinarily read a phrase in a criminal statute that introduces the elements of a crime with the word 'knowingly' as applying that word to each element." *Id.* at 652 (citing *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 79 (1994) (Stevens, J., concurring)); *see also Liparota*, 471 U.S. at 420 n.1, 423 (holding that the word "knowingly" applies to the phrase "in any manner not authorized by [law]," in a federal food stamp statute providing "[w]hoever knowingly uses, transfers, acquires, alters or possesses coupons or authorization cards in any manner not authorized by [law]").

Likewise, in *X-Citement Video*, the Court interpreted a statute that imposed criminal penalties on "[a]ny person who – (1) knowingly transports or ships in interstate or foreign commerce by any means including by computer or mails, any visual depiction, if – (A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct." 513 U.S. at 68. The question there was whether "knowingly" modified "the use of a minor." *Id.* This Court recognized that the phrase was not the direct object of the verbs that "knowingly" modified and that the phrase was in a different subsection. Indeed, the Court highlighted that many sex crimes involving

minors do not require the offender to know that the victim is a minor. *Id.* at 68, 70, 72 & n.2. Nonetheless, this Court concluded that the intent element ("knowingly") applied not only to the transportation or shipment of visual depictions of sexually explicit activity, but also to "the use of a minor" in such depictions. *Id.* at 78.

In so holding, the Court read its prior cases to "instruct[] that the presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct." *Id.* at 72; *see also Flores-Figueroa*, 556 U.S. at 660 (Alito, J., concurring) ("In interpreting a criminal statute such as the one before us, I think it is fair to begin with a general presumption that the specified *mens rea* applies to all the elements of an offense, but it must be recognized that there are instances in which context may rebut that presumption.").[4]

In this case, "the crucial element separating legal innocence from wrongful conduct," *X-Citement Video*, 513 U.S. at 73, is Mr. Rehaif's status as an alien

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[4] This Court's approach in *Flores-Figueroa* is consistent with that of the Model Penal Code § 2.02(4) (Am. Law Inst. 1985), which states:

> Prescribed Culpability Requirement Applies to All Material Elements. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

The explanatory note indicates that this provision "is addressed to a pervasive ambiguity in definitions of offenses that include a culpability requirement, namely, that it is often difficult to determine how many of the elements of the offense the requirement is meant to modify."

illegally in the United States. This Court's jurisprudence therefore directs that the statutory *mens rea* of knowledge must apply to that element. It is "hardly crazy to think that in a § 922(g)(1) prosecution Congress might require the government to prove that the defendant had knowledge of the *only fact* (his felony status) separating criminal behavior from not just permissible, but constitutionally protected, conduct." *Games-Perez*, 667 F.3d at 1145 (Gorsuch, J., concurring).

Moreover, this established presumption – that a *mens rea* requirement attaches to each statutory element that results in the criminalization of innocent conduct – applies even in criminal statutes that do not specify any *mens rea*. In *Staples*, for example, the Court considered a statute that criminalized possession of an unregistered "firearm" and defined "firearm" to include automatic and exclude semi-automatic guns. 511 U.S. 600. The defendant argued that he believed the weapon was semi-automatic and that his lack of knowledge of the weapon's status precluded his conviction. *Id.* at 602. Despite the absence of any *mens rea* requirement in the statutory text, this Court explained that "[s]ilence does not suggest that Congress dispensed with *mens rea* for the element . . . at issue here." *Id.* at 619. The Court then held that "the Government should have been required to prove that petitioner knew of the features of his [gun] that brought it within the scope of the Act." *Id.* at 619-20. In so holding, the Court relied on "the background rule of the common law favoring *mens rea* and the substantial body of precedent . . . developed construing statutes that do not specify a mental element." *Id.* at 619 n.17.

Similarly, in *Elonis v. United States*, this Court stated that "[t]he fact that the statute does not specify

any required mental state . . . does not mean that none exists." 135 S. Ct. 2001, 2009 (2015). In that context, the Court again emphasized that the "presumption in favor of a scienter requirement should apply to *each* of the statutory elements that criminalize otherwise innocent conduct." *Id.* (quoting *X–Citement Video*, 513 U.S. at 72); *see also Morissette*, 342 U.S. at 250 ("[M]ere omission from a criminal enactment of any mention of criminal intent [should not be read] as dispensing with it.") *Id.* at 252 ("[W]rongdoing must be conscious to be criminal."). It makes sense for courts to read a *mens rea* requirement *into* a crime's statutory elements, but it makes no sense when Congress expressly imposes a "knowingly violates" element in § 924(a)(2) for § 922(g) offenses to read that *mens rea* element *out* of the statute. *See Games-Perez*, 667 F.3d at 1143-44 (Gorsuch, J., concurring).

This Court's precedent discussed above has a venerable pedigree. As Justice Jackson explained:

> The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.

Morissette, 342 U.S. at 250. The doctrine is found in "Blackstone's sweeping statement that to constitute any crime there must first be a 'vicious will.'" *Id.* at 251 (quoting 4 William Blackstone, *Commentaries* *21). Further, the concept that crimes "generally [are] constituted only from concurrence of an evil-meaning mind with an evil-doing hand[] was congenial to an intense individualism and took deep and early root in American soil." *Id.* at 251-52. *Elonis*, accordingly, is yet another manifestation of an established principle

that governs this Court's interpretation of federal criminal laws.

In sum, this Court presumes a *mens rea* requirement attaches to all statutory elements that criminalize otherwise innocent conduct. *X-Citement Video*, 513 U.S. at 72. Further, when the scienter required is "knowingly," that scienter applies to all elements of the crime, as this Court unanimously held in *Flores-Figueroa*, 556 U.S. at 650, 652. The plain text of the relevant provisions here, as well as this Court's treatment of the *mens rea* requirements of criminal statutes, thus mandate that before a defendant may be convicted of a § 922(g) offense, he must *knowingly violate* § 922(g) as to both the status and possession elements of the crime.

II. ADDITIONAL TOOLS OF STATUTORY CONSTRUCTION SUPPORT MR. REHAIF'S INTERPRETATION.

The plain language of the statutes alone should decide this case. Mr. Rehaif's reading also draws support from other tools of statutory construction, including a review of the congressional purpose, the constitutional avoidance canon, and the rule of lenity.

A. Mr. Rehaif's Reading of "Knowingly Violates" is Consistent With the History and Purpose of the Firearm Owners' Protection Act.

The historical and legal backdrop against which § 924(a)(2) was enacted supports reading "knowingly violates" as applying to both the status and possession elements of § 922(g). *See Wirtz v. Local 153, Bottle Blowers Ass'n*, 389 U.S. 463, 468 (1968) ("[P]roper construction [of a statute's text] frequently requires consideration of wording against the background of its

legislative history and in the light of the general objectives Congress sought to achieve.").

Congress enacted the relevant text of § 924(a)(2) as part of the Firearms Owners' Protection Act (FOPA) in 1986. *See* Firearm Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 449 (1986). As its title suggests, Congress passed FOPA to ease any undue or unnecessary federal restrictions or burdens on firearm possession. *See id.*; *see also United States v. Turkette*, 452 U.S. 576, 588-90 (1981) (relying on RICO's statement of purpose, 18 U.S.C. § 1961, to interpret the term "enterprise"); *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) (providing that "the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute") (internal quotation marks omitted).

Before FOPA's enactment, federal regulation of firearms was primarily governed by the Gun Control Act of 1968. *See* Pub. L. No. 90-351, 82 Stat. 225 (1968). Like FOPA, the Gun Control Act barred certain individuals from possessing firearms. *Id.* But unlike FOPA, the Gun Control Act contained no *mens rea* requirement. The Act simply provided that, "[w]hoever violates any provision of this chapter . . . shall be fined not more than $5,000, or imprisoned not more than five years, or both." Pub. L. No. 90-618, § 102, 82 Stat. 1223-24 (1968).

Despite the lack of an express *mens rea* requirement, courts did not interpret the Act to impose strict liability. *See United States v. Int'l Minerals & Chem. Corp.*, 402 U.S. 558, 560 (1971). Courts, however, consistently interpreted portions of the Act as requiring the minimum *mens rea* requirement: knowledge of the possession of a firearm. They did not however, require the government to prove that the

defendant knew that he came within a category of persons prohibited from possessing a firearm.[5]

Significantly for this case, throughout FOPA's enactment process, Congress expressed its concern about the Gun Control Act's minimal *mens rea* requirements. For instance, a 1982 report by the Senate Subcommittee on the Constitution, which became the genesis for FOPA, expressly criticized enforcement efforts under the Gun Control Act because those efforts were devoted largely to the "apprehension, upon technical *malum prohibitum* charges, of individuals who lack all criminal intent and knowledge." *See* The Right to Keep and Bear Arms: Report of the Subcommittee on the Constitution, Senate Judiciary Committee, 97th Cong., 2d Sess. (1982).Thus, when enacting FOPA, one congressional purpose was to strengthen the *mens rea* requirements for most of the Gun Control Act's provisions. *See* 132 Cong. Rec. 9590 (1986) (statement of Sen. Hatch) (expressing Congress's concern that the lack of such a requirement had resulted in "severe penalties for unintentional missteps"). Congress directly addressed the concerns raised in the Constitution Subcommittee's report by amending § 924(a)(2) to add a knowledge *mens rea* requirement and impose penalties on only an individual who "knowingly violates" § 922(g). *See* Pub. L. No. 99-308, § 101, 100 Stat. 449, 450.

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[5] *See also United States v. Ware*, 758 F.2d 557 (11th Cir. 1985) (defendant's belief that he could lawfully receive firearms would be irrelevant and inadmissible); *United States v. Pruner*, 606 F.2d 871 (9th Cir. 1979) (trial court committed no error in not permitting the jury to consider whether defendant knew it was illegal for him to receive a firearm); *United States v. Ruisi*, 460 F.2d 153 (2d Cir. 1972) (government need not establish that defendant knew it was illegal for him to receive firearms).

Against this historical and legal backdrop, Congress's addition of "knowingly" to § 924(a)(2) is significant. It reveals an intent to *extend*, rather than retract or leave in place, existing *mens rea* requirements under the Gun Control Act. *See Pa. Dep't Pub. Welfare v. Davenport*, 495 U.S. 552, 563 (1990) (finding that the statutory language evidenced an intent to depart from past practice). As one judge has explained:

> [I]t is clear from the legislative history that the primary motivation for adding *any* express *mens rea* requirement to the FOPA provisions at issue here was to increase the safeguards against convictions for inadvertent, or careless conduct. That is to say, the general legislative intent indisputably was to move in the direction of extending rather than retracting or leaving in place existing *mens rea* requirements as judicially interpreted.

United States v. Langley, 62 F.3d 602, 618 (4th Cir. 1995) (Phillips, J., concurring).

Congress is presumed to have been aware of existing judicial interpretation of the Gun Control Act, requiring knowledge of possessing a firearm but not requiring knowledge of one's prohibited status. *See Cannon v. Univ. of Chi.*, 441 U.S. 677, 698-99 (1979). Thus, the most logical conclusion to draw from Congress's addition of the knowledge requirement to § 924(a)(2), is that Congress meant to extend the existing *mens rea* requirements of § 922(g). And the only substantive element for which it would have been necessary to add a knowledge *mens rea* requirement is § 922(g)'s status element. Had Congress intended simply to codify existing judicial interpretation of the Gun Control Act that did not require knowledge of one's status as a prohibited person, it would not have

altered § 924's text to *add* the knowledge requirement. *See id.*

The contrary position stated by the court in *Langley* – that the chronology of FOPA's enactment demonstrates that Congress did not intend to extend the "knowingly violates" requirement to a defendant's prohibited status – is deeply flawed.[6] The majority in *Langley* concluded that "it is not clear from the legislative history of FOPA whether Congress intended to extend the term 'knowingly' to one or all of the substantive elements of each offense in § 922." 62 F.3d at 605. The *Langley* court therefore simply relied on its pre-FOPA interpretation and its belief that Congress did not change that interpretation. But Congress did change that interpretation – it added a *mens rea* requirement that is best read to apply to all substantive elements of § 922(g). "Whatever weight courts may give to judicial interpretations of predecessor statutes when the current statute is *ambiguous*, those prior interpretations of now defunct statutes carry no weight when the language of the current statute is *clear*." *Games-Perez*, 695 F.3d at 1118 (Gorsuch, J., dissenting from denial of reh'g en banc).

Moreover, at the time of FOPA's enactment, Congress would equally be presumed to be aware of this Court's "powerful primary canon of statutory construction" – "that, unless statutory language or legislative history evinces a contrary intent, a nonspecific *mens rea* requirement was intended by Congress to run to 'each of the statutory elements which criminalize otherwise innocent behavior.'" *Langley*, 62 F.3d at 614 (Phillips, J., concurring)

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[6] The Eleventh Circuit relied upon *Langley*'s analysis. *See* Pet. App. 10a-14a.

(quoting *X-Citement Video*, 513 U.S. at 72); *see also United States v. U.S. Gypsum Co.*, 438 U.S. 422, 436 (1978); *Dennis v. United States*, 341 U.S. 494, 500 (1951). Put differently, "the Supreme Court's application of the common law presumption of an intent to give scienter requirements their broadest possible reach (i.e., to all elements, including criminalizing 'facts and circumstances') must be accorded primacy as interpretive guide." *See Langley*, 62 F.3d at 618 (Phillips, J., concurring).

Finally, Congress knows how to dispense with a knowledge requirement when it chooses to do so. For instance, in a statute which makes it a crime to "knowingly engage[] in a sexual act with another person who – (1) has attained the age of 12 years but has not attained the age of 16 years; and (2) is at least four years younger than the person so engaging," Congress expressly provided that, "the Government need not prove that the defendant knew – (1) the age of the other person engaging in the sexual act; or (2) that the requisite age difference existed between the persons so engaging." 18 U.S.C. §§ 2243(a)&(d); *see also* 18 U.S.C. § 1751(j) (providing that, "[i]n a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an official protected by this section"); *supra* at 13 n.2 (quoting 18 U.S.C. § 2241).

When drafting FOPA, had Congress intended to exempt § 922(g)'s status element from the "knowingly violates" requirement it obviously could have done so, just as it had done in these other contexts. *See Cent. Bank of Denver v. First Interstate Bank*, 511 U.S. 164, 176-77 (1994). Congress presumably also could have, for example, inserted "knowingly" before the possession element of § 922(g).

Congress did neither of those things. Instead, it added "knowingly" to § 924(a)(2). That text, considered in light of the historical background in which it was enacted, further demonstrates Congress's intent to apply the "knowingly violates" requirement to all the substantive elements of § 922(g), including the single element that makes possession of a firearm illegal—one's status as a prohibited person.

B. Requiring the Government to Prove that a Defendant Knew His or Her Status at the Time of the Firearm Possession Avoids Due Process Concerns.

As demonstrated above, the text of the statutes is plain and consistent with the legislative history. An alternative reading should be rejected under the constitutional-avoidance canon. Under that canon, "when statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems." *Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018). Interpreting §§ 924(a)(2) and 922(g) to impose significant criminal penalties for gun possession on individuals who, *unbeknownst to themselves*, fall into specific categories would create significant Due Process issues. *See, e.g., United States v. Renner*, 496 F.2d 922, 926 (6th Cir. 1974) ("[T]o convict a person of an offense where being under indictment is an element, it must be shown that the accused had knowledge of the indictment; without such a showing a serious question of due process would be involved.").

While the provisions criminalize gun possession for several classes of persons, "gun possession is often lawful and sometimes even protected as a matter of constitutional right." *Games-Perez*, 695 F.3d at 1119 (Gorsuch, J., dissenting from denial of rehearing en

banc); *see also Staples*, 511 U.S. at 610 ("[T]here is a long tradition of widespread lawful gun ownership by private individuals in this country."). Thus, "[t]he *only* statutory element separating innocent (even constitutionally protected) gun possession from criminal conduct in §§ 922(g) and 924(a) is" the defendant's status, here as an alien unlawfully in the country. *Games-Perez*, 695 F.3d at 1119 (Gorsuch, J., dissenting from denial of reh'g en banc). Imposing criminal liability on otherwise innocent conduct violates Due Process, particularly where, as here, the criminal penalties are severe. Section 924(a)(2) authorizes punishment of up to 10 years in prison.[7] It is fundamentally unfair to impose criminal punishment on a person engaged in otherwise innocent conduct without requiring proof of knowledge of what converts that innocent conduct into a serious crime.

As is evident from the decisions described *supra* at Part I.B, this Court has generally refused to "dispens[e] with *mens rea* [when doing so] would require the defendant to have knowledge only of traditionally lawful conduct." *Staples*, 511 U.S. at 618; *see also id.* at 610 ("[T]he particular care we have taken to avoid construing a statute to dispense with *mens rea* where doing so would 'criminalize a broad range of apparently innocent conduct'") (quoting *Liparota*, 471 U.S. at 426); *X-Citement Video*, 513 U.S. at 72 ("[T]he presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct.").

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[7] *See Staples*, 511 U.S. at 616-17 (describing potential punishment of up to 10 years' imprisonment as "severe").

In that context – where a specific statutory element converts innocent or protected conduct into criminal conduct – there is a strong argument that the Court's decisions to extend the *mens rea* requirement to that element have been constitutionally based. In *X-Citement Video*, for example, this Court considered whether a criminal statute forbidding persons to "knowingly" engage in certain activities involving the visual depiction of a minor engaging in sexually explicit conduct requires the defendant to know that the person depicted is a minor. The Court recognized that engaging in these activities was both innocent and constitutionally protected behavior unless the person depicted was a minor. After extensively discussing the inconclusive legislative history, this Court observed that "'criminal responsibility may not be imposed without some element of scienter on the part of the defendant,'" and concluded that "a statute completely bereft of a scienter requirement as to the age of the performers would raise serious constitutional doubts." *Id.* at 78 (quoting *New York v. Ferber* 458 U.S. 747, 765 (1982)). The Court therefore "read the statute to eliminate those doubts" after concluding that such a reading was "not plainly contrary to the intent of Congress." *Id.*

The principle of constitutional avoidance here is closely related to – and arises from the same source as – the Court's general presumption that "a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct." *X-Citement Video*, 513 U.S. at 72. That source is the historical principle that a crime requires both "a vicious will" and "an unlawful act," 4 William Blackstone, *Commentaries* *21; *Morissette*, 342 U.S. at 252-54 & nn.11-12. The Due Process Clause "specially protects those fundamental rights and liberties, which

are, objectively, 'deeply rooted in this Nation's history and tradition.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). The statutes here should be read in accordance with the plain text – requiring knowledge of both the status and possession elements – thus avoiding potential Due Process violations. Imposing severe criminal penalties on a defendant for conduct that would be innocent and potentially constitutionally protected if he or she were unaware of the status that criminalized his or her conduct raises grave constitutional concerns.

C. The Rule of Lenity Resolves Any Ambiguity in Mr. Rehaif's Favor.

When this Court's "recourse to traditional tools of statutory construction leaves any doubt about the meaning" of a criminal statute, it "invoke[s] the rule that 'ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.'" *Yates v. United States*, 135 S. Ct. 1074, 1088 (2015) (quoting *Cleveland v. United States*, 531 U.S. 12, 25 (2000)) (citations omitted). "Application of the rule of lenity ensures that criminal statutes will provide fair warning concerning conduct rendered illegal and strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability." *Liparota*, 471 U.S. at 427. The text at issue is clear, particularly in light of the established framework for interpretation of *mens rea* requirements in criminal statutes. But if this Court disagrees, it should invoke the rule of lenity to resolve any ambiguity.

The Court has already charted this path in *Liparota*. There the Court interpreted a statute that provided "'whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by [the statute] or the

regulations' is subject to a fine and imprisonment." *Id.* at 420. The question presented was "the mental state, if any, that the Government must show in proving that petitioner acted 'in any manner not authorized by [the statute] or the regulations.'" *Id.* at 423. The government argued that the requirement that the defendant act "knowingly" did *not* extend to the requirement that a defendant engage in the forbidden activities with coupons or authorization cards "in any manner not authorized by [the statute] or the regulations." *Id.*

After reviewing the text and structure of the relevant provisions, the Court found that "the words themselves provide little guidance. Either interpretation would accord with ordinary usage." *Id.* at 424. This Court nonetheless held that, "[a]bsent indication of contrary purpose in the language or legislative history of the statute, we believe that [the statute] requires a showing that the defendant knew his conduct to be unauthorized by statute or regulations." *Id.* at 425.[8]

In so interpreting the text, the Court observed that the contrary interpretation would make a broad range of innocent conduct illegal. *Id.* at 426. Relevant here, it further explained:

> [R]equiring *mens rea* is in keeping with our longstanding recognition of the principle that ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity. Application of the rule of lenity ensures that criminal statutes will provide fair warning

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[8] *See also id.* at 433 ("We hold that in a prosecution for violation of [the statute], the Government must prove that the defendant knew that his acquisition or possession of food stamps was in a manner unauthorized by statute or regulations.").

> concerning conduct rendered illegal and strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability.

Id. at 427 (internal quotation marks and citations omitted). This application of the rule of lenity in *Liparota* is particularly notable because it appears to have overcome another traditional interpretive doctrine – that "ignorance of the law is no excuse." *See Flores-Figueroa*, 556 U.S. at 652 (expressly noting this circumstance).

If the Court concludes the provisions here are ambiguous, "[t]he purposes underlying the rule of lenity—to promote fair notice to those subject to the criminal laws, to minimize the risk of selective or arbitrary enforcement, and to maintain the proper balance between Congress, prosecutors, and courts—are certainly served by its application in this case." *United States v. Kozminski*, 487 U.S. 931, 952 (1988).

III. THE ARGUMENTS SUPPORTING THE DECISION BELOW ARE NOT PERSUASIVE.

The court below relied on three main arguments. Each argument is flawed, and none overcomes the statutes' plain meaning and the clear import of this Court's cases.

A. Whether the "Knowingly Violates" Requirement Applies to the "Interstate Commerce" Element of § 922(g) Has No Bearing on the Resolution of the Issue Presented.

The court below asserted that the statutory provisions at issue are ambiguous by reasoning that the statutory *mens rea* would not apply to the "interstate commerce" element of § 922(g). Pet. App.

10a. The "interstate commerce" element is a jurisdictional, rather than a substantive, element of the offense. That the *mens rea* requirement would not apply to the jurisdictional element does nothing to undermine that the *mens rea* requirement applies to both substantive elements of the offense – status and possession.

Unlike the substantive status and possession elements, a jurisdictional element has long been excepted from the application of *mens rea*. On several occasions, this Court has distinguished "the substantive elements of a federal statute describ[ing] the evil Congress seeks to prevent" and "the jurisdictional element [that] connects the law to one of Congress's enumerated powers, thus establishing legislative authority." *Torres v. Lynch*, 136 S. Ct. 1619, 1630 (2016). The Court has explained that knowledge of jurisdictional facts – such as a connection to interstate commerce – is not generally required in federal criminal statutes. *See id.* at 1631 ("[C]ourts have routinely held that a criminal defendant need not know of a federal crime's interstate commerce connection to be found guilty" because "Congress viewed the commerce element as distinct from, and subject to a different rule than, the elements describing the substantive offense"); *United States v. Feola*, 420 U.S. 671, 676 n.9 (1975) ("[T]he existence of the fact that confers federal jurisdiction need not be one in the mind of the actor at the time he perpetrates the act made criminal by the federal statute.").

Put differently, this Court's general presumption that a *mens rea* requirement extends to all elements of the statute that define the criminal act does not include jurisdictional requirements. The presence of a jurisdictional fact may, for example, provide federal jurisdiction over an offense otherwise committed with

evil intent. *See id.* at 676. But a jurisdictional requirement is not an element defining the criminal activity itself. This Court's established treatment of the jurisdictional elements of federal criminal statutes therefore does not call into question the statutory interpretation set forth in Part I, above.

B. The Presumptive Requirement of a *Mens Rea* for All Substantive Elements of a Crime That Distinguish it From Innocent Behavior Extends to a Defendant's Status Under § 922(g).

The court below asserted that this Court's "presumption of *mens rea*" for all elements of an offense does not apply where a "defendant's knowledge of his own status offers little room for 'reasonable mistake.'" Pet. App 17a (quoting *X-Citement Video*, 513 U.S. at 72 n.2). The court observed that "no precedent" of this Court "requires the government to prove that the defendant knew of his own status." Pet. App. 17a.

This attempted distinction of *Morissette*, *Staples*, *Liparota*, and *X-Citement Video* is unavailing. Nothing in the decisions defines any category of elements of a crime that is excluded from the Court's overriding instruction that all elements of a crime that distinguish criminal from innocent behavior presumptively require a *mens rea*.

This Court's opinion in *X-Citement Video* discusses the potential relevance of "[t]he opportunity for reasonable mistake" to the common law decision not to require *mens rea* for certain sex offenses. 513 U.S. at 72 n.2. The opinion does not purport to speak to status generally or suggest that the Court's general interpretive presumption does not apply to federal statutes defining crimes. But, even assuming this

Court might not apply the presumption to statutes where there is no "opportunity for reasonable mistake," that point is misplaced in this case. Whether a defendant has committed a felony or engaged in an immigration violation is often complex and does not resemble an immutable personal characteristic.[9] There is thus no basis to assume, as the Eleventh Circuit did, that defendants always know their "status."

C. The Eleventh Circuit's Speculation About Congress's Purposes is not Grounded in Either the Text or Specific Legislative Statements of Purpose.

Finally, the court below relied on two speculative propositions about Congress's likely intent in enacting the relevant provisions: First, that "it is highly unlikely that Congress intended to make it easier for felons to avoid prosecution by permitting them to claim that they were unaware [of their status]." Pet. App. 17a (quoting *Langley*, 62 F.3d at 606). Second, that in light of Congress's "repeated efforts to fight violent crime and the commission of drug offenses, it is unlikely that Congress intended to make" enhancement of defendants' penalties harder. *Id.*

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[9] The court below sought to bolster this argument by pointing out that at common law, the crimes of statutory rape and bigamy involved strict liability about the defendant's own age and marital status. Pet. App. 14a-15a. That argument might have some force interpreting a federal statute criminalizing statutory rape and bigamy without including a required mental state. Here, it is inapt because common law tradition had no analogous firearms possession laws, because one's status under § 922(g) as, e.g., a felon or unlawful immigrant, is far more complex than age or marital status, and because Congress imposed a *mens rea* requirement for violations of § 922(g).

These general statements of congressional purpose, of course, cannot overcome the textual and other considerations described in Part I, above. In fact, "it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be law." *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (per curiam). Indeed, the purpose of adding the *mens rea* requirement here was to protect against prosecutions for inadvertent conduct. *See* Part II.A, *supra*. Requiring the government to prove that a defendant knew his status may result in the government having to marshal a modicum of additional evidence. But that burden is consistent with the text and purpose of the statutes and separates unlawful from innocent conduct.

The court below nonetheless presumed that Congress did not intend to make it more difficult for the government to prove that the defendant has the requisite knowledge. This Court described such a concern as one of "practical importance" in *Flores-Figueroa*, 556 U.S. at 655. But, the Court continued, this practical problem is not "sufficient . . . to turn the tide in the Government's favor," explaining, *inter alia*, that "concerns about practical enforceability are insufficient to outweigh the clarity of the text. Similar interpretations we have given other similarly phrased statutes also create practical enforcement problems." *Id.* at 656 (citing *X-Citement Video*, 513 U.S. 64; *Liparota*, 471 U.S. 419). In words that are apt here, the Court continued that "had Congress placed conclusive weight upon practical enforcement, the statute would likely not read the way it now reads. Instead, Congress used the word 'knowingly' followed by a list of offense elements." *Id.* at 656-67.

Here, similar to *Flores-Figueroa*, Congress requires the government to prove a defendant "knowingly violate[d]" § 922(g) before he or she can be punished under § 924(a)(2). The text is clear, and the government should be required to prove both that the defendant knew his status and that the defendant knew he possessed a firearm, the two substantive elements of a § 922(g) violation.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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